

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos. 21140 and 26998 of 2015

DATED 28th September, 2015

BETWEEN

M/s. National Agriculture & Consumer Multi
State Cooperative of India Limited,
Represented by its Authorised Signatory
Mr. Om Prakash.

...Petitioner in both WPs

And

State of Andhra Pradesh,
Rep. by its Principal Secretary,
Department of Agriculture and Marketing,
Secretariat, Hyderabad and ors.

...Respondents in both WPs

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos. 21140 and 26998 of 2015

COMMON ORDER:

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Inasmuch as these two Writ Petitions are inter connected, they are heard together and being disposed of by this common order.

Heard learned Counsel for the petitioner and learned Standing Counsel for the second respondent.

The petitioner is a multi state agriculture cooperative Society having its office at Lucknow. The main ingredient for production of illicit distilled liquor is black jaggery and in order to control the movement of black jaggery, the Government issued an order called GUR (Regulation of use) Order, 1968. The black jaggery which is a product of sugar cane is included under the said Order. Clause 3 thereof regulates the use of such GUR. The Government took note of misuse of back jaggery and accordingly issued G.O.Rt.No.2167 dated 13.11.2003 providing for sale of black jaggery to state corporations located outside the State and ensure that they move out of the State. It was followed by G.O.Ms.No.87 dated 16.02.2002 providing for disposal of black jaggery to national level agencies outside the State so as to avoid storage and in order to make it not available locally.

When the second respondent issued tender notification on 12.5.2015 eligibility criteria was restricted to national level organizations having its presence in multi States and also having experience in handling agricultural commodities. The petitioner submitted its tender and when the same was not considered and on the other hand, when the tenders were cancelled, the petitioner filed Writ Petition No. 21140 of 2015. Pending disposal of the said Writ Petition, the second respondent changed the eligibility criteria issued Request for Proposal (REF) dated 20.8.2015 by allowing traders and individuals to participate in e-auction on 28.8.2015 apart from National Level Agencies. Questioning the same, the petitioner filed Writ Petition No. 26998 of 2015.

A counter affidavit is filed on behalf of the second respondent admitting issuance of G.O.Ms.No. 87, dated 16.02.2012 and stating that they have been following the said Government Order. When the counter filed on 21.8.2015 was not clear, an additional counter was filed stating as follows:

“ Accordingly the tender notification was published in the national edition of Times of India dated 12.5.2015 stating that the tender was scheduled to be opened on 25.05.2015. There was no response to this notification till 24.5.2015. Hence, it was decided to extend the date of opening of tenders from 25.5.2015 up to 3.6.2015. This change in the tender was given in another notification under the caption corrigendum in the national edition of Times of India on 24.5.2015.

4. It is submitted that on 3.6.2015 five tenders were received but the highest price quoted was Rs.13/Kg whereas the prevailing market value of black jaggery is Rs.27/Kg. Therefore it was decided to issue another notification on 21.06.2015 calling for tenders on 2.7.2015. This work was entrusted to an organization named M/s NeML (NCDEX e-Markets Ltd). Since black jaggery is a new product for NeML, the organization took time for preparing RFP by NeML. In addition to this, NeML sought extra time for registering the buyers to participate in the e-auction. Due to this delay, it was decided to extend the time for conducting the auction from 2.7.2015 to 10.7.2015. This was published as corrigendum dated 1.7.2015 in the national editions of Times of India. It is further submitted that in the e-auctions held on 10.7.2015 no bids were received. Therefore, a state level meeting was held on 27.7.2015 at 11.30 a.m. to take a decision with regard to the next auction. It was decided in the meeting to entrust the job of conducting e-auctions to M/s NeML organization without modifying any clause in the earlier RFP. Hence M/s. NeML issued notification on 20.8.2015 giving the date of opening tenders as 28.8.2015. Even in this tender no bids were received.

5. It is respectfully submitted that the change in the tenders is as per the guidelines issued by the Government and the decisions taken by the state level committees. This change in conducting auction is only to gain better price for Black Jaggery and there is no illegality in the steps taken by this respondent. There is no change in the rule of RFP while changing the dates of auction and it is falsely alleged by the petitioner that the clauses in RFP were changed with an ulterior motive.”

The learned Counsel for the petitioner submits that the subsequent tenders were issued on 21.6.2015 and 28.8.2015 inviting bids not only from eligible national level agencies, multi-state cooperative agencies and end users of black jaggery (Ayurvedic pharma companies/Feed Mixing Plants/Spirit

Distillers etc) capable of consuming the purchased black jaggery outside the Andhra Pradesh and Telangana States, but also from traders and individuals.

On the other hand, the learned Standing Counsel for the second respondent submits that the eligibility criteria of the tenderers was relaxed as sufficient number of bidders were not responded pursuant to earlier tender notification. She submits that in view of the improper response, the tender notifications dated 21.6.2015 and 28.8.2015 did not fructify.

Having heard the learned Counsel on either side and gone through the material available on record, it is manifestly clear that the tender notification issued by the second respondent on earlier occasion did not receive proper response and therefore the second respondent cancelled the earlier tender. This Court does not want to examine the validity or otherwise of the tender notifications issued by the second respondent. However, it is needless to observe that as and when the second respondent invites tenders, the same shall be in consonance with the guidelines/instructions issued in G.O.Rt.No.2167, dated 13.11.2003 read with G.O.Ms.No.87, dated 16.02.2012.

Subject to the above observation, the Writ Petitions are closed. Miscellaneous petitions pending consideration if any in the Writ Petitions shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 28th September, 2015.

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